THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.23408 of 2006

17.11.2006

Between:

Mir Sabith Ali Khan, S/o.Late Mir Mehaboob Ali Khan
And 390 others

..... PETITIONERS

AND

The Principal Secretary, Government of Andhra Pradesh,
Secretariat, Hyderabad
And others

.....RESPONDENTS

THE HON'BLE SRI JUSTICE V.V.S. RAO

WRIT PETITION No.23408 of 2006

ORDER:

This writ petition is filed by as many as 391 petitioners, challenging the order of the Government of Andhra Pradesh (GoAP) – the first respondent herein; in G.O.Ms.No.786 Revenue (SS.I) Department, dated 05.9.1991 as invalid, arbitrary and in violation of principles of natural justice. They seek a writ of Mandamus invalidating the impugned G.O. The impugned G.O. was already subject matter of a writ petition being W.P.No.12223 of 1991 filed by respondents 8 and 9 herein, namely Sahebzadi Basheerunnisa Begum and Sahebzadi Nusratunnisa Begum. The said writ petition was dismissed by a learned Single Judge of this Court on 22.3.2006 by an elaborate order tracing the history of the predecessors of the petitioners and their right in the property since 1875 A.D. The order of the learned Single Judge is assailed in W.A.No.1151 of 2001, which is pending before a Division Bench of this Court. The petitioners herein also filed a miscellaneous application being WAMP No.1559 of 2006 before the Division Bench praying the Court to implead them as party respondents to writ appeal. By an order dated 24.8.2006, WAMP was dismissed. Again the petitioners advisedly filed this writ petition.

The above observations warrant no elaborate reference to the detailed facts nor a detailed reference to their earlier futile litigation, need be adverted to. Limiting to barest facts, the case of the petitioners is noticed in the ensuing paragraph.

The petitioners' ancestor Nawab Mir Basheeruddin Ali Khan (also known as Samsam-ud-dowla) was statedly the second son of 3rd Nizam of Hyderabad State. He allegedly purchased land admeasuring Acs.251.01 guntas in survey Nos.101 and 104 situated Kompally village of Quthbullapur Mandal in Ranga Reddy District (the then Hyderabad District). However in 1965 the District Collector, Hyderabad, assigned an extent of Acs.160.00 to 45 landless poor persons of Pet Basheerabad village of Medchal Mandal in Ranga Reddy District. Assailing the assignment, land owners filed a revision before the third respondent, who set aside the assignment by order dated 20.7.1982. The assignees preferred revision petition before the Government under Section 166-C of A.P. (Telangana Area) Land Revenue Act 1317 F. The same was dismissed on 29.10.1985. Some of the petitioners filed W.P.Nos.17881 of 1988 and 10743 of 1989 seeking writ of Mandamus to implement the orders of the third respondent dated 20.7.1982. The same was allowed

in 1994. Government then preferred W.A.No.528 of 1994 against W.P. No.10743 of 1989 but the same was withdrawn. In the meanwhile, the assignees filed a review petition before the Government challenging the order of the third respondent. The same was allowed by the impugned order in G.O.Ms.No.786, dated 05.9.1991.

There was also parallel proceedings at the behest of one V.V.Raman, who filed a suit being O.S.No.60 of 1966 claiming to be purchaser of lands in survey Nos.101 and 104 of Kompally village under an agreement of sale from the legal heirs of Samsam-ud-dowla. The Agro Industrial Cooperative Society also filed O.S.No.19 of 1969 claiming title. The Court of Chief Judge, City Civil Court, Hydrabad, dismissed the suit on 13.12.1973 *inter alia* holding that the lands in survey Nos.101 and 104 are Government lands and that V.V.Raman or his vendors has no title. The Civil Court also held that the assignment by the Government/sale of land by the assignees in favour of the Agro Industrial Cooperative Society is valid. The judgment of the Civil Court was subject matter of CCCA Nos.43 and 45 of 1974 before this Court. A Division Bench of this Court dismissed both the appeals on 02.8.1977. As noticed, the impugned G.O. was passed on 05.9.1991 allowing the revision petition filed by villagers of Pet Basheerabad, which was challenged by respondents 8 and 9 herein unsuccessfully before the learned Single Judge[1].

Learned Counsel for the petitioners, Mr.C.M.R.Velu, submits that power to exercise review by the Government is improper and without jurisdiction, as the impugned G.O. came to be passed after lapse of nine years from the date of passing of the order by the third respondent. He nextly contends that the sale of land by the assignees in favour of the Agro Industrial Cooperative Society is illegal and the same ought to have weighed with the Government while passing the impugned order. He also submits that Samsam-ud-dowla was the original pattadar of the land and the petitioners herein being legal heirs of the pattadar are entitled to get back the possession of the land or appropriate relief for the loss of the land. Learned Counsel however does not dispute that the application filed by the petitioners being WAMP No.1559 of 2006 was dismissed and that there is a delay on the part of the petitioners in approaching this Court.

The writ petition as framed is not maintainable and is misconceived on the ground of *locus standi*, delay and laches and principles of *res judicata*. The reasons in brief are as follows.

locus standi: While dismissing their application being WAMP No.1559 of 2006, the Division Bench *inter alia* held that.-

> … … The legality of G.O.Ms.No.786, dt.5.9.1991 can be decided by the court evening the absence of applicants. If the

> applicants had any grievance against the G.O. impugned in the Writ Petition filed by non-applicant Nos.1 and 2, they could have also filed similar petition or joined with non-applicant Nos.1 and 2. However, the fact of the matter is that they did not challenge the G.O., and through this application they are seeking to revive the time barred claim, which is legally impermissible, … … The factor like absence of prejudice to non-applicant Nos.1 and 2 can be taken into consideration for deciding the entitlement of the applicants to be impleaded as parties to the Writ Petition (which has already been decided) and the Writ Appeal. What the court is required to see is whether the presence of the applicants is necessary for proper and comprehensive adjudication of the issue raised in the Appeal or Writ Petition. In the present case, we find that non-applicant Nos.1 and 2 have challenged G.O.Ms.No.786, dt.5.9.1991. For deciding the same, the presence of the applicants is not at all necessary.

In view of the above, petitioners have no *locus standi* to challenge the G.O. now.

Delay and laches: It is now well settled that writ petition is not a proper remedy to seek redressal in relation to stale and time-barred claims. One should not forget the prescription under Section 27 of Limitation Act, 1963, to the effect that "by lapse of time the rights of the parties get extinguished". If the land is claimed by the Government and any person is taking a claim as owner of such land, the limitation is twelve years for filing a suit under Articles 64 and 65 of Limitation Act and the petitioners cannot now revive an extinguished right to ownership of subject land. Delay defeats rights and claim for equity.

res judicata: In the appeals arising out of two suits filed by V.V.Raman, the Division Bench, in its judgment in CCCA Nos.43 and 45 of 1974, dated 02.8.1977, observed as under.

> For the aforesaid reasons, no permanent injunction can be granted in favour of Sri Raman, against defendants 14 to 20 in his suit. Even if the title of the society is said to have not been made out for any reason, even then no injunction can be granted against the Government which is a party to the suit. We have observed hereinbefore that, **in the absence of title in Sri Raman and his vendors, the suit land would be deemed to be the Government land and hence no injunction can be granted against the true owner. O.S.No.73 of 1972 was, therefore, rightly dismissed by the trial Court and we, accordingly, dismiss the appeal, CCCA No.45 of 1974, with costs.** … … … … Now coming to CCCA No.43 of 1974 (which arises from O.S.No.19 of 1969), it too is liable to be dismissed since we have upheld the findings of the trial Court that the Society has succeeded in establishing the title of its predecessors-in-interest and the Government. Even if, for any reason, it is held that the Society is barred by the rule of *res judicata* from obtaining a declaration of its title to the said land,

even then it is entitled to recover possession on the ground of its possessory title. Once it is proved that it was in lawful possession of the said land and that, Sri Raman had come into possession of the said land only under and by virtue of a temporary injunction issued by the Court, and more so when Sri Raman has failed to prove title either in himself or in his vendors, the Society is entitled to get back its possession. **The Society is ultimately claiming under the Government which is the undoubted owner of the land in question. For the aforesaid reasons, we confirm the judgment and decree of the trial court in O.S.No.19 of 1969 and dismiss the appeal, CCCA No.43 of 1974, but in the circumstances, without costs.**

(emphasis supplied)

Before parting with this order, this Court must express anguish over such desperate claims made – of late such spurious claims for land surrounding Hyderabad are rampant. Such claims are not only vexatious and frivolous but also mockery of the very process of dispensing justice by Public Law Court. As the writ appeal filed by respondents 8 and 9 being W.A.No.1151 of 2001 against invalidation of the impugned G.O. by learned Single Judge is being adjudicated, this Court has to enter a caveat that these observations are intended for limited purpose of *in limine* dismissal of the writ petition.

The writ petition, for the above observations, is dismissed. No costs.

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(**V.V.S.RAO, J**)

November 17, 2006
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[1] For more detailed reference to other factual matrix and the nature of the claim of the petitioners and their rival claims, a reference may be made to the unreported order of this Court dated 22.3.2002 in W.P.No.12223 of 1991 : *Sahebzadi Basheerunnisa Begum and another v GoAP*. This is annexed at p.431 of Vol.I of paper book.